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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,082	06/25/2003	Jeremy R. Myles	5513P012	6537

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EXAMINER

KAO, CHIH CHENG G

ART UNIT PAPER NUMBER

2882

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/607,082

Applicant(s)

MYLES, JEREMY R.

Examiner

Chih-Cheng Glen Kao

Art Unit

2882

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4, 6-9, 19, 21-27, 29, 32, 34-40, 42-46, 48-52 and 56-60.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding at least claim 1, Applicant argues that Bailey et al. does not disclose "adjusting automatically the treatment plan based on movement in the fluoroscopy data image". The Examiner disagrees. As stated before in the Office Action mailed 2/23/06, the initial plan for treatment (i.e., a treatment plan) is to treat a patient on a table in an aperture (paragraph 48, lines 1-4), as implied from Bailey et al. Next, fluoroscopy data image is received (paragraph 48, lines 5-7), to automatically adjust the treatment plan based on movement in the data image (paragraph 48, line 8). Such adjustments include adjusting a patient position or radiotherapy beam so that the beam is appropriately aligned (paragraph 49). Thus, the treatment plan has been adjusted from just treating a patient on a table in an aperture (paragraph 48, lines 1-4) to include adjusting a patient position or radiotherapy beam (paragraph 49). Therefore, Bailey et al. does disclose "adjusting automatically the treatment plan based on movement in the fluoroscopy data image".

In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a real time or 'live' video image") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Furthermore, in response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the original plan (e.g., the region of interest, therapy radiation beam shape, size, and alignment with the target region of the original plan) changing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. The Examiner has interpreted the original plan (e.g., the position of the patient) changing.

Regarding Frohlich et al., the same logic as above applies.

Regarding claim 56, Applicant argues that Bailey et al. does not disclose a system that comprises a simulation component wherein said radiation source is at a fixed position relative to the gantry. The Examiner disagrees. The radiation source (fig. 1, #22a) of Bailey et al. is at a fixed position relative to the gantry (fig. 1, #18). The Examiner has interpreted a fixed position to mean the fixed area inside the outer circumference of the gantry. Therefore, the radiation source is at a fixed position (i.e., area) relative to the gantry.

Regarding claim 60, Applicant argues that Bailey et al. does not disclose that a distance between the source and the axis of rotation is fixed. The Examiner disagrees. The source (fig. 1, #22a) moves in a circle around the center of rotation (fig. 1, #16). Therefore, regardless of where the source is along the circumference of that circle, the radius (i.e., the distance between the source and the axis of rotation) remains fixed, since it is a circle.

Regarding claims 25 and 38, Applicant argues that Kapatoes et al. does not disclose recalculating a treatment plan based on the input associated with the digital image, and saving the recalculated plan. The Examiner disagrees. As stated before in the Office Action mailed 2/23/06, Kapatoes et al. discloses recalculating a treatment plan based on the input associated with the digital image (col. 6, lines 6-15), and necessarily saving the recalculated treatment plan for further processes (col. 6, lines 15-25). Applicant further argues that Kapatoes et al. teaches away from the invention. The Examiner disagrees. As pointed out by Applicant, Kapatoes et al. teaches creating a new dose distribution and distinguished the new dose from a "dose that would be prescribed had the physician fully re-optimized the treatment plan." In other words, the new dose distribution is the recalculation itself.

Furthermore, in response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., recalculating the original treatment plan (according to an adjustment of target position, target movement, incorrect fields, setups that cannot be mechanically achieved, and/or respiratory motion)) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Regarding Besson et al., Applicant argues that Besson et al. does not disclose means to move the patient support as the gantry rotates to maintain a constant distance between the radiation source and a point defined in relation to the patient support. The Examiner disagrees. As stated in the Office Action mailed 2/23/06, Besson et al. discloses means to move the patient support (fig. 1, #58) as the gantry rotates (fig. 1) to maintain a constant distance between the radiation source (fig. 1, #10) and a point (fig. 1, isocenter of gantry) defined in relation to the patient support (fig. 1, #46). The helical pattern (fig. 1, #22' and S) exemplifies the simultaneous moving and rotating, while the radiation source rotates on a circumference of a circle around the isocenter of the gantry (i.e., a point). The isocenter of the gantry is necessarily defined in relation to the patient support, since all points are defined in relation to something else.

Regarding claims 4, 19, 32, and 46, in response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

Regarding claim 52, Applicant argues that Bailey et al. does not teach or suggest producing a treatment plan for placement of a radiation source while the patient is on the patient support. The Examiner disagrees. While a patient (fig. 1, #62) is on the patient support (fig. 1, #60), the patient is imaged to determine the shape, size, and location of the targeted region (paragraphs 48 and 49). From these images, a treatment plan, including moving the table to insure that the targeted region of the patient is within the region of interest, is produced for placement of a radiation source in relation to the table. In other words adjusting a position of a patient and/or a radiotherapy beam is considered as treatment plan in of itself.

Regarding claims 58 and 59, Applicant argues that Collins et al. does not teach or suggest a single cast frame gantry having two portions at an angle. The Examiner disagrees. Collins et al. does teach or suggest a single cast frame gantry having two portions at an angle (fig. 1, #210).

In conclusion, Applicant's arguments are not persuasive, and the claims remain rejected.